

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LONNIE JUNIOR JONES,

Defendant-Appellant.

UNPUBLISHED

June 21, 2005

No. 255726

Bay Circuit Court

LC No. 03-011102-FC

Before: Owens, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of first-degree criminal sexual conduct, MCL 750.520b(1)(f), and first-degree home invasion, MCL 750.110a(2). We affirm.

Defendant first argues that his convictions were not supported by sufficient evidence. Upon de novo review of the record, and considering the evidence in a light most favorable to the prosecution, we disagree and conclude that a rational trier of fact could have found the essential elements proven beyond a reasonable doubt. See *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002).

To establish first-degree criminal sexual conduct the prosecution had to prove that defendant used force or coercion to engage in sexual penetration of the victim, causing personal injury. MCL 750.520b(1)(f). To establish the first-degree home invasion charge, the prosecution had to prove that defendant broke into and entered the victim's dwelling with the intent to commit the sexual assault. MCL 750.110a(2). Defendant claims that the evidence was deficient as to his identity and use of force or coercion causing personal injury with regard to the sexual assault. Further, defendant argues, since the sexual assault was not proven, neither was the home invasion charge.

The identity of the perpetrator is always an essential element of a criminal prosecution. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976). However, positive identification by a witness may be sufficient evidence to support a conviction for a crime. *People v Davis*, 241

Mich App 697, 700; 617 NW2d 381 (2000). Here, the victim testified that, on the evening of the assault, she went home and found defendant already in her house, sitting on her couch. She asked him what he was doing in her house and, as she was trying to leave, he grabbed her from behind, held a sharp object to her head and dragged her into the kitchen. Defendant left after the assault and the victim notified the police. She described the perpetrator as black, kind of tall and slim, had no teeth, and was wearing jeans and a white t-shirt. She told the police that the perpetrator looked familiar to her, that she recognized him from somewhere but could not remember where. She picked his picture out of a photographic lineup and identified him in court. The credibility of identification testimony is a question for the trier of fact that this Court does not resolve anew. *Id.*; *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

Further, circumstantial evidence and reasonable inferences arising from it may also prove identification. See *People v Bulmer*, 256 Mich App 33, 37-38; 662 NW2d 117 (2003). Here, police officer testimony included that defendant had no teeth, defendant lived within two blocks from where the victim lived, and matched the victim's description. Upon the attempted execution of the search warrant, defendant ran from the officers and, when he was caught, continued to struggle with the officers by kicking, yelling, and screaming. During his interview with police following arrest, defendant admitted to wearing jeans and a white shirt on the day of the assault, and indicated that he was at a party store by the victim's apartment buying beer at the approximate time the assault occurred. At trial, defendant testified that he was in the victim's apartment building the night of the assault, visiting a woman who lived there as he had for over a year, and that he was under the influence of cocaine and alcohol. The woman lived in apartment number four and the victim lived in apartment number five. In sum, based on the victim's positive identification, as well as the circumstantial evidence presented, a rational juror could find that defendant was the person who committed the home invasion and sexual assault as charged.

And, the evidence was sufficient to show that defendant used force or coercion to accomplish sexual penetration causing the victim personal injury. The victim testified that, after she returned home to find defendant in her home, she attempted to flee but he grabbed her from behind, put a sharp object to her forehead, and dragged her kicking and fighting to the kitchen where he sexually assaulted her. The nurse who examined the victim after the assault testified that the victim had a laceration above her right eyebrow, an abrasion on her knee, a laceration at her urethra (which appeared to have occurred recently and was not accidental in nature), and swelling and bruising around the urethra consistent with penetration. The victim also testified as to how the assault caused her mental anguish, causing her to be fearful, forcing her to move, causing her to have trouble eating and sleeping, and to have nightmares. In light of the evidence, a rational juror could conclude, beyond a reasonable doubt, that defendant used force causing the victim personal injury during the perpetration of the sexual assault. Because defendant's criminal sexual conduct conviction was sufficiently supported by the evidence, his argument that the home invasion charge should be reversed on this ground is also without merit.

Next, defendant argues that the trial court erred when it allowed the prosecutor to introduce evidence of flight. We disagree. The trial court's decision to admit evidence is reviewed for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

Although Michigan recognizes the equivocal nature of evidence of flight, such evidence is generally considered relevant. *People v Cutchall*, 200 Mich App 396, 398; 504 NW2d 666 (1993), overruled in part on other grounds by *People v Edgett*, 220 Mich App 686, 691-694; 560 NW2d 360 (1996); *People v Clark*, 124 Mich App 410, 413; 335 NW2d 53 (1983). Evidence of flight is admissible to support an inference of “consciousness of guilt.” *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). Here, when the police officer approached defendant by name, defendant said, “I ain’t Lonnie. I ain’t done nothin’ wrong” and then he started to run. The evidence was relevant and was not more prejudicial than probative. The jury was properly instructed that evidence of flight is not evidence of guilt; rather flight could result from fear, mistake, panic or some other innocent reason. Further, that the evidence forced defendant to testify that he was running because he previously failed to appear for arraignment on a drug charge does not render the evidence of flight more prejudicial than probative. There was other evidence admitted as to defendant’s drug use and addiction. Thus, the trial court did not abuse its discretion when it admitted the contested evidence.

Finally, defendant argues that he is entitled to resentencing because offense variables (OV) 4, 7, and 10 were misscored and the resulting sentence is a departure from the applicable guidelines. We disagree. A trial court's scoring of a sentencing guideline’s variable is reviewed for clear error. *People v Hicks*, 259 Mich App 518, 522; 675 NW2d 599 (2003). A scoring decision is not clearly erroneous if the record contains ‘any evidence in support’ of the decision. *People v Witherspoon (After Remand)*, 257 Mich App 329, 335; 670 NW2d 434 (2003) (citation omitted).

Defendant claims that OV 4, for psychological injury to a victim, should not have been scored ten points because there was no record of such injury. But, as discussed above, the victim testified that the incident “changed my whole life,” she was not the same anymore, she had to move, had difficulty eating because she vomits when she eats, could not sleep sometimes, had nightmares, and could not live alone anymore. The trial court noted that the victim was highly emotional, appeared to be very traumatized, and could barely testify on the witness stand at times. The court opined that the victim clearly suffered a psychological injury which may require professional treatment. See MCL 777.34(2). This scoring decision is not clearly erroneous.

Defendant claims that OV 7, for aggravated physical abuse, was improperly scored at fifty points because there was no evidence of excessive brutality or conduct designed to substantially increase the fear and anxiety of the victim. See MCL 777.37. But, as the trial court noted, the evidence included that defendant prevented the victim from leaving her home by grabbing her from behind, kicking the door shut, and placing a sharp object against her forehead while he dragged her to the kitchen and sexually assaulted her after she passed out. This scoring decision was not clearly erroneous.

Finally, defendant claims that OV 10, exploitation of a victim’s vulnerability, should not have been scored at fifteen points because predatory conduct was not involved. See MCL 777.40(1)(b). However, as noted by the trial court, defendant entered into the victim’s home without permission and was waiting for her when she returned home. When she entered her home, defendant said that he had been waiting for her and that it was about time she got home. There were indications that he had been watching the victim, knew that she lived alone, and was waiting for an opportunity to surprise and assault her. This scoring decision was not clearly

erroneous. In sum, the sentencing guidelines were properly scored and defendant's sentence was within the guidelines range.

Affirmed.

/s/ Donald S. Owens
/s/ Mark J. Cavanagh
/s/ Janet T. Neff